

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 3489**

OFFERED BY MR. PICKERING OF MISSISSIPPI

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the “Wireless Telecommuni-
3 cations Sourcing and Privacy Act”.

4 SEC. 2. FINDINGS.

5 The Congress finds the following:

6 (1) The provision of mobile telecommunications
7 services is a matter of interstate commerce within
8 the jurisdiction of the United States Congress under
9 Article I, Section 8 of the United States Constitu-
10 tion. Certain aspects of mobile telecommunications
11 technologies and services do not respect, and operate
12 independently of, State and local jurisdictional
13 boundaries.

14 (2) The mobility afforded to millions of Amer-
15 ican consumers by mobile telecommunications serv-
16 ices helps to fuel the American economy, facilitate
17 the development of the information superhighway
18 and provide important safety benefits.

1 (3) Users of mobile telecommunications services
2 can originate a call in one State or local jurisdiction
3 and travel through other States or local jurisdictions
4 during the course of the call. These circumstances
5 make it more difficult to track the separate seg-
6 ments of a particular call with all of the States and
7 local jurisdictions involved with the call. In addition,
8 expanded home calling areas, bundled service offer-
9 ings and other marketing advances make it increas-
10 ingly difficult to assign each transaction to a specific
11 taxing jurisdiction.

12 (4) State and local taxes imposed on mobile
13 telecommunications services that are not consistently
14 based can subject consumers, businesses and others
15 engaged in interstate commerce to multiple, con-
16 fusing and burdensome State and local taxes and re-
17 sult in higher costs to consumers and the industry.

18 (5) State and local taxes that are not consist-
19 ently based can result in some telecommunications
20 revenues inadvertently escaping State and local tax-
21 ation altogether, thereby violating standards of tax
22 fairness, creating inequities among competitors in
23 the telecommunications market and depriving State
24 and local governments of needed tax revenues.

1 (6) Because State and local tax laws and regu-
2 lations of many jurisdictions were established before
3 the proliferation of mobile telecommunications serv-
4 ices, the application of these laws to the provision of
5 mobile telecommunications services may produce
6 conflicting or unintended tax results.

7 (7) State and local governments provide essen-
8 tial public services, including services that Congress
9 encourages State and local governments to under-
10 take in partnership with the Federal government for
11 the achievement of important national policy goals.

12 (8) State and local governments provide serv-
13 ices that support the flow of interstate commerce,
14 including services that support the use and develop-
15 ment of mobile telecommunications services.

16 (9) State governments as sovereign entities in
17 our Federal system may require that interstate com-
18 merce conducted within their borders pay its fair
19 share of tax to support the governmental services
20 provided by those governments.

21 (10) Local governments as autonomous subdivi-
22 sions of a State government may require that inter-
23 state commerce conducted within their borders pay
24 its fair share of tax to support the governmental
25 services provided by those governments.

1 (11) To balance the needs of interstate com-
2 merce and the mobile telecommunications industry
3 with the legitimate role of State and local govern-
4 ments in our system of federalism, Congress needs
5 to establish a uniform and coherent national policy
6 regarding the taxation of mobile telecommunications
7 services through the exercise of its constitutional au-
8 thority to regulate interstate commerce.

9 (12) Congress also recognizes that the solution
10 established by this legislation is a necessarily prac-
11 tical one and must provide for a system of State and
12 local taxation of mobile telecommunications services
13 that in the absence of this solution would not other-
14 wise occur. To this extent, Congress exercises its
15 power to provide a reasonable solution to otherwise
16 insoluble problems of multi-jurisdictional commerce.

17 **SEC. 3. AMENDMENT OF COMMUNICATIONS ACT OF 1934 TO**
18 **PROVIDE RULES FOR DETERMINING STATE**
19 **AND LOCAL GOVERNMENT TREATMENT OF**
20 **CHARGES RELATED TO MOBILE TELE-**
21 **COMMUNICATIONS SERVICES.**

22 (a) IN GENERAL.—The Communications Act of 1934
23 (47 U.S.C. 151 et seq.) is amended by adding at the end
24 thereof the following:

1 **“TITLE VIII—STATE AND LOCAL**
2 **TREATMENT OF CHARGES**
3 **FOR MOBILE TELECOMMUNI-**
4 **CATIONS SERVICES**

5 **“SEC. 801. APPLICATION OF TITLE.**

6 “(a) IN GENERAL.—This title applies to any tax,
7 charge, or fee levied by a taxing jurisdiction as a fixed
8 charge for each customer or measured by gross amounts
9 charged to customers for mobile telecommunications serv-
10 ices, regardless of whether such tax, charge, or fee is im-
11 posed on the vendor or customer of the service and regard-
12 less of the terminology used to describe the tax, charge,
13 or fee.

14 “(b) GENERAL EXCEPTIONS.—This title does not
15 apply to—

16 “(1) any tax, charge, or fee levied upon or
17 measured by the net income, capital stock, net
18 worth, or property value of the provider of mobile
19 telecommunications service;

20 “(2) any tax, charge, or fee that is applied to
21 an equitably apportioned amount that is not deter-
22 mined on a transactional basis;

23 “(3) any tax, charge, or fee that represents
24 compensation for a mobile telecommunications serv-
25 ice provider’s use of public rights of way or other

1 public property, provided that such tax, charge, or
2 fee is not levied by the taxing jurisdiction as a fixed
3 charge for each customer or measured by gross
4 amounts charged to customers for mobile tele-
5 communication services;

6 “(4) any generally applicable business and occu-
7 pation tax that is imposed by a State, is applied to
8 gross receipts or gross proceeds, is the legal liability
9 of the carrier, and statutorily allows the taxpayer to
10 elect to use the sourcing method required in this
11 Act; or

12 “(5) any fee related to obligations under section
13 254 of this Act.”.

14 “(c) SPECIFIC EXCEPTIONS.—This title—

15 “(1) does not apply to the determination of the
16 taxing situs of prepaid telephone calling services;

17 “(2) does not affect the taxability of either the
18 initial sale of mobile telecommunications services or
19 subsequent resale, whether as sales of the service
20 alone or as a part of a bundled product, where the
21 Internet Tax Freedom Act would preclude a taxing
22 jurisdiction from subjecting the charges of the sale
23 of these mobile telecommunications services to a tax,
24 charge, or fee but this section provides no evidence
25 of the intent of Congress with respect to the applica-

1 bility of the Internet Tax Freedom Act to such
2 charges; and

3 “(3) does not apply to the determination of the
4 taxing situs of air-ground radiotelephone service as
5 defined in section 22.99 of the Commission’s regula-
6 tions (47 C.F.R. 22.99).

7 **“SEC. 802. SOURCING RULES.**

8 “(a) IN GENERAL.—Notwithstanding the law of any
9 State or political subdivision thereof to the contrary, mo-
10 bile telecommunications services provided in a taxing juris-
11 diction to a customer, the charges for which are billed by
12 or for the customer’s home service provider, shall be
13 deemed to be provided by the customer’s home service pro-
14 vider.

15 “(b) JURISDICTION.—All charges for mobile tele-
16 communications services that are deemed to be provided
17 by the customer’s home service provider under this title
18 are authorized to be subjected to tax, charge, or fee by
19 the taxing jurisdictions whose territorial limits encompass
20 the customer’s place of primary use, regardless of where
21 the mobile telecommunication services originate, terminate
22 or pass through, and no other taxing jurisdiction may im-
23 pose taxes, charges, or fees on charges for such mobile
24 telecommunications services.

1 **“SEC. 803. LIMITATIONS.**

2 “This title does not—

3 “(1) provide authority to a taxing jurisdiction
4 to impose a tax, charge, or fee that the laws of the
5 jurisdiction do not authorize the jurisdiction to im-
6 pose; or

7 “(2) modify, impair, supersede, or authorize the
8 modification, impairment, or supersession of, the law
9 of any taxing jurisdiction pertaining to taxation ex-
10 cept as expressly provided in this title.

11 **“SEC. 804. ELECTRONIC DATABASES FOR NATIONWIDE**
12 **STANDARD NUMERIC JURISDICTIONAL**
13 **CODES.**

14 “(a) ELECTRONIC DATABASE.—A State may provide
15 an electronic database to a home service provider or, if
16 a State does not provide such an electronic database to
17 home service providers, then the designated database pro-
18 vider may provide an electronic database to a home service
19 provider. The electronic database, whether provided by the
20 State or the designated database provider, shall be pro-
21 vided in a format approved by the American National
22 Standards Institute’s Accredited Standards Committee
23 X12, that, allowing for de minimis deviations, designates
24 for each street address in the State, including to the ex-
25 tent practicable, any multiple postal street addresses ap-
26 plicable to one street location, the appropriate taxing juris-

1 ditions, and the appropriate code for each taxing jurisdic-
2 tion, for each level of taxing jurisdiction, identified by one
3 nationwide standard numeric code. The electronic data-
4 base shall also provide the appropriate code for each street
5 address with respect to political subdivisions which are not
6 taxing jurisdictions when reasonably needed to determine
7 the proper taxing jurisdiction. The nationwide standard
8 numeric codes shall contain the same number of numeric
9 digits with each digit or combination of digits referring
10 to the same level of taxing jurisdiction throughout the
11 United States using a format similar to FIPS 55-3 or
12 other appropriate standard approved by the Federation of
13 Tax Administrators and the Multistate Tax Commission,
14 or their successors. Each address shall be provided in
15 standard postal format.

16 “(b) NOTICE; UPDATES.—A State or designated
17 database provider that provides or maintains an electronic
18 database described in subsection (a) shall provide notice
19 of the availability of the then current electronic database,
20 and any subsequent revisions thereof, by publication in the
21 manner normally employed for the publication of informa-
22 tional tax, charge, or fee notices to taxpayers in that
23 State.

24 “(c) USER HELD HARMLESS.—A home service pro-
25 vider using the data contained in the electronic database

1 described in subsection (a) shall be held harmless from
2 any tax, charge, or fee liability that otherwise would be
3 due solely as a result of any error or omission in the elec-
4 tronic database provided by a State or designated data-
5 base provider. The home service provider shall reflect
6 changes made to the electronic database during a calendar
7 quarter no later than 30 days after the end of that cal-
8 endar quarter for each State that issues notice of the
9 availability of an electronic database reflecting such
10 changes under subsection (b).

11 **“SEC. 805. PROCEDURE WHERE NO ELECTRONIC DATABASE**
12 **PROVIDED.**

13 “(a) IN GENERAL.—If neither a State nor designated
14 database provider provides an electronic database under
15 section 804, a home service provider shall be held harmless
16 from any tax, charge, or fee liability in that State that
17 otherwise would be due solely as a result of an assignment
18 of a street address to an incorrect taxing jurisdiction if,
19 subject to section 806, the home service provider employs
20 an enhanced zip code to assign each street address to a
21 specific taxing jurisdiction for each level of taxing jurisdic-
22 tion and exercises due diligence at each level of taxing ju-
23 risdiction to ensure that each such street address is as-
24 signed to the correct taxing jurisdiction. Where an en-
25 hanced zip code overlaps boundaries of taxing jurisdictions

1 of the same level, the home service provider must des-
2 ignate one specific jurisdiction within such enhanced zip
3 code for use in taxing the activity for that enhanced zip
4 code for each level of taxing jurisdiction. Any enhanced
5 zip code assignment changed in accordance with section
6 806 is deemed to be in compliance with this section. For
7 purposes of this section, there is a rebuttable presumption
8 that a home service provider has exercised due diligence
9 if such home service provider demonstrates that it has—

10 “(1) expended reasonable resources to imple-
11 ment and maintain an appropriately detailed elec-
12 tronic database of street address assignments to tax-
13 ing jurisdictions;

14 “(2) implemented and maintained reasonable
15 internal controls to promptly correct misassignments
16 of street addresses to taxing jurisdictions; and

17 “(3) used all reasonably obtainable and usable
18 data pertaining to municipal annexations,
19 incorporations, reorganizations and any other
20 changes in jurisdictional boundaries that materially
21 affect the accuracy of the electronic database.

22 “(b) TERMINATION OF SAFE HARBOR.—Subsection
23 (a) applies to a home service provider that is in compliance
24 with the requirements of subsection (a), with respect to

1 a State for which an electronic database is not provided
2 under section 804 until the later of—

3 “(1) 18 months after the nationwide standard
4 numeric code described in section 804(a) has been
5 approved by the Federation of Tax Administrators
6 and the Multistate Tax Commission; or

7 “(2) 6 months after that State or a designated
8 database provider in that State provides the elec-
9 tronic database as prescribed in section 804(a).

10 **“SEC. 806. CORRECTION OF ERRONEOUS DATA FOR PLACE**
11 **OF PRIMARY USE.**

12 “(a) IN GENERAL.—A taxing jurisdiction, or a State
13 on behalf of any taxing jurisdiction or taxing jurisdictions
14 within such State, may—

15 “(1) determine that the address used for pur-
16 poses of determining the taxing jurisdictions to
17 which taxes, charges, or fees for mobile tele-
18 communications services are remitted does not meet
19 the definition of place of primary use in section
20 809(3) and give binding notice to the home service
21 provider to change the place of primary use on a
22 prospective basis from the date of notice of deter-
23 mination if—

24 “(A) where the taxing jurisdiction making
25 such determination is not a State, such taxing

1 jurisdiction obtains the consent of all affected
2 taxing jurisdictions within the State before giv-
3 ing such notice of determination; and

4 “(B) the customer is given an opportunity,
5 prior to such notice of determination, to dem-
6 onstrate in accordance with applicable State or
7 local tax, charge, or fee administrative proce-
8 dures that the address is the customer’s place
9 of primary use;

10 “(2) determine that the assignment of a taxing
11 jurisdiction by a home service provider under section
12 805 does not reflect the correct taxing jurisdiction
13 and give binding notice to the home service provider
14 to change the assignment on a prospective basis
15 from the date of notice of determination if—

16 “(A) where the taxing jurisdiction making
17 such determination is not a State, such taxing
18 jurisdiction obtains the consent of all affected
19 taxing jurisdictions within the State before giv-
20 ing such notice of determination; and

21 “(B) the home service provider is given an
22 opportunity to demonstrate in accordance with
23 applicable State or local tax, charge, or fee ad-
24 ministrative procedures that the assignment re-
25 flects the correct taxing jurisdiction.

1 **“SEC. 807. DUTY OF HOME SERVICE PROVIDER REGARDING**
2 **PLACE OF PRIMARY USE.**

3 “(a) PLACE OF PRIMARY USE.—A home service pro-
4 vider is responsible for obtaining and maintaining the cus-
5 tomer’s place of primary use (as defined in section 809).
6 Subject to section 806, and if the home service provider’s
7 reliance on information provided by its customer is in good
8 faith, a home service provider—

9 “(1) may rely on the applicable residential or
10 business street address supplied by the home service
11 provider’s customer; and

12 “(2) is not liable for any additional taxes,
13 charges, or fees based on a different determination
14 of the place of primary use for taxes, charges or fees
15 that are customarily passed on to the customer as
16 a separate itemized charge.

17 “(b) ADDRESS UNDER EXISTING AGREEMENTS.—
18 Except as provided in section 806, a home service provider
19 may treat the address used by the home service provider
20 for tax purposes for any customer under a service contract
21 or agreement in effect 2 years after the date of enactment
22 of the Wireless Telecommunications Sourcing and Privacy
23 Act as that customer’s place of primary use for the re-
24 maining term of such service contract or agreement, ex-
25 cluding any extension or renewal of such service contract
26 or agreement, for purposes of determining the taxing ju-

1 jurisdictions to which taxes, charges, or fees on charges for
2 mobile telecommunications services are remitted.

3 **“SEC. 808. SCOPE; SPECIAL RULES.**

4 “(a) TITLE DOES NOT SUPERSEDE CUSTOMER’S LI-
5 ABILITY TO TAXING JURISDICTION.—Nothing in this title
6 modifies, impairs, supersedes, or authorizes the modifica-
7 tion, impairment, or supersession of, any law allowing a
8 taxing jurisdiction to collect a tax, charge, or fee from a
9 customer that has failed to provide its place of primary
10 use.

11 “(b) ADDITIONAL TAXABLE CHARGES.—If a taxing
12 jurisdiction does not otherwise subject charges for mobile
13 telecommunications services to taxation and if these
14 charges are aggregated with and not separately stated
15 from charges that are subject to taxation, then the charges
16 for otherwise non-taxable mobile telecommunications serv-
17 ices may be subject to taxation unless the home service
18 provider can reasonably identify charges not subject to
19 such tax, charge, or fee from its books and records that
20 are kept in the regular course of business.

21 “(c) NON-TAXABLE CHARGES.—If a taxing jurisdic-
22 tion does not subject charges for mobile telecommuni-
23 cations services to taxation, a customer may not rely upon
24 the nontaxability of charges for mobile telecommuni-
25 cations services unless the customer’s home service pro-

1 vider separately states the charges for non-taxable mobile
2 telecommunications services from taxable charges or the
3 home service provider elects, after receiving a written re-
4 quest from the customer in the form required by the pro-
5 vider, to provide verifiable data based upon the home serv-
6 ice provider's books and records that are kept in the reg-
7 ular course of business that reasonably identifies the non-
8 taxable charges.

9 “(d) REFERENCES TO REGULATIONS.—Any ref-
10 erence in this title to the Commission's regulations is a
11 reference to those regulations as they were in effect on
12 June 1, 1999.

13 **“SEC. 809. DEFINITIONS.**

14 “In this title:

15 “(1) CHARGES FOR MOBILE TELECOMMUNI-
16 CATIONS SERVICES.—The term ‘charges for mobile
17 telecommunications services’ means any charge for,
18 or associated with, the provision of commercial mo-
19 bile radio service, as defined in section 20.3 of the
20 Commission's regulations (47 C.F.R. 20.3), or any
21 charge for, or associated with, a service provided as
22 an adjunct to a commercial mobile radio service,
23 that is billed to the customer by or for the cus-
24 tomer's home service provider regardless of whether
25 individual transmissions originate or terminate with-

1 in the licensed service area of the home service pro-
2 vider.

3 “(2) TAXING JURISDICTION.—The term ‘taxing
4 jurisdiction’ means any of the several States, the
5 District of Columbia, or any territory or possession
6 of the United States, any municipality, city, county,
7 township, parish, transportation district, or assess-
8 ment jurisdiction, or any other political subdivision
9 within the territorial limits of the United States with
10 the authority to impose a tax, charge, or fee.

11 “(3) PLACE OF PRIMARY USE.—The term ‘place
12 of primary use’ means the street address representa-
13 tive of where the customer’s use of the mobile tele-
14 communications service primarily occurs, which must
15 be—

16 “(A) either the residential street address
17 or the primary business street address of the
18 customer; and

19 “(B) within the licensed service area of the
20 home service provider.

21 “(4) LICENSED SERVICE AREA.—The term ‘li-
22 censed service area’ means the geographic area in
23 which the home service provider is authorized by law
24 or contract to provide commercial mobile radio serv-
25 ice to the customer.

1 “(5) HOME SERVICE PROVIDER.—The term
2 ‘home service provider’ means the facilities-based
3 carrier or reseller with which the customer contracts
4 for the provision of mobile telecommunications serv-
5 ices.

6 “(6) CUSTOMER.—

7 “(A) IN GENERAL.—The term ‘customer’
8 means—

9 “(i) the person or entity that con-
10 tracts with the home service provider for
11 mobile telecommunications services; or

12 “(ii) where the end user of mobile
13 telecommunications services is not the con-
14 tracting party, the end user of the mobile
15 telecommunications service, but this clause
16 applies only for the purpose of determining
17 the place of primary use.

18 “(B) The term ‘customer’ does not
19 include—

20 “(i) a reseller of mobile telecommuni-
21 cations service; or

22 “(ii) a serving carrier under an ar-
23 rangement to serve the customer outside
24 the home service provider’s licensed service
25 area.

1 “(7) DESIGNATED DATABASE PROVIDER.—The
2 term “designated database provider” means a cor-
3 poration, association, or other entity representing all
4 the political subdivisions of a State that is—

5 “(A) responsible for providing the elec-
6 tronic database prescribed in section 804(a) if
7 the State has not provided such electronic data-
8 base; and

9 “(B) sanctioned by municipal and county
10 associations or leagues of the State whose re-
11 sponsibility it would otherwise be to provide the
12 electronic database prescribed by this title.

13 “(8) PREPAID TELEPHONE CALLING SERV-
14 ICES.—The term ‘prepaid telephone calling service’
15 means the right to purchase exclusively tele-
16 communications services that must be paid for in
17 advance, that enables the origination of calls using
18 an access number, authorization code, or both,
19 whether manually or electronically dialed, if the re-
20 maining amount of units of service that have been
21 prepaid is known by the provider of the prepaid
22 service on a continuous basis.

23 “(9) RESELLER.—The term ‘reseller’—

24 “(A) means a provider who purchases tele-
25 communications services from another tele-

1 communications service provider and then re-
2 sells, uses as a component part of, or integrates
3 the purchased services into a mobile tele-
4 communications service; but

5 “(B) does not include a serving carrier
6 with which a home service provider arranges for
7 the services to its customers outside the home
8 service provider’s licensed service area.

9 “(10) SERVING CARRIER.—The term ‘serving
10 carrier’ means a facilities-based carrier providing
11 mobile telecommunications service to a customer
12 outside a home service provider’s or reseller’s li-
13 censed service area.

14 “(11) MOBILE TELECOMMUNICATIONS SERV-
15 ICE.—The term ‘mobile telecommunications service’
16 means commercial mobile radio service, as defined in
17 section 20.3 of the Commission’s regulations (47
18 C.F.R. 20.3).

19 “(12) ENHANCED ZIP CODE.—The term ‘en-
20 hanced zip code’ means a United States postal zip
21 code of 9 or more digits.

1 **“SEC. 810. COMMISSION NOT TO HAVE JURISDICTION OF**
2 **TITLE.**

3 “Notwithstanding any other provision of this Act, the
4 Commission shall have no jurisdiction over the interpreta-
5 tion, implementation, or enforcement of this title.

6 **“SEC. 811. NONSEVERABILITY.**

7 “If a court of competent jurisdiction enters a final
8 judgment on the merits that is no longer subject to appeal,
9 which substantially limits or impairs the essential ele-
10 ments of this title based on Federal statutory or Federal
11 Constitutional grounds, or which determines that this title
12 violates the United States Constitution, then the provi-
13 sions of this title are null and void and of no effect.

14 **“SEC. 812. NO INFERENCE.**

15 “(a) INTERNET TAX FREEDOM ACT.—Nothing in
16 this title may be construed as bearing on Congressional
17 intent in enacting the Internet Tax Freedom Act or as
18 affecting that Act in any way.

19 “(b) TELECOMMUNICATIONS ACT OF 1996.—Nothing
20 in this title shall limit or otherwise affect the implementa-
21 tion of the Telecommunications Act of 1996 or the amend-
22 ments made by that Act.”.

23 (b) EFFECTIVE DATE.—The amendment made by
24 subsection (a) applies to customer bills issued after the
25 first day of the first month beginning more than 2 years
26 after the date of enactment of this Act.

1 **SEC. 4. GAO DETERMINATION OF FCC REGULATORY FEES.**

2 Within 180 days after the date of the enactment of
3 this Act, the Comptroller General of the United States
4 shall—

5 (1) conduct a review of the regulatory fees with
6 respect to mobile telecommunications services that
7 were collected during fiscal years 1998, 1999, and
8 2000 by the Federal Communications Commission to
9 determine—

10 (A) whether such fees were assessed in ac-
11 cordance with section 9 of the Communications
12 Act of 1934 (47 U.S.C. 159) and applicable
13 public notices; and

14 (B) whether the Commission acquired in-
15 formation related to the assessment of such fees
16 in a timely and accurate manner, and has
17 maintained such information, that is sufficient
18 to support the transactions; and

19 (2) submit a report to the Congress regarding
20 such review and determinations.

21 **SEC. 5. COMMERCE IN ELECTRONIC EAVESDROPPING DE-**
22 **VICES.**

23 (a) PROHIBITION ON MODIFICATION.—Section
24 302(b) of the Communications Act of 1934 (47 U.S.C.
25 302a(b)) is amended by inserting before the period at the
26 end thereof the following: “, or modify any such device,

1 equipment, or system in any manner that causes such de-
2 vice, equipment, or system to fail to comply with such reg-
3 ulations”.

4 (b) PROHIBITION ON COMMERCE IN SCANNING RE-
5 CEIVERS.—Section 302(d) of such Act (47 U.S.C.
6 302a(d)) is amended to read as follows:

7 “(d) EQUIPMENT AUTHORIZATION REGULATIONS.—

8 “(1) PRIVACY PROTECTIONS REQUIRED.—The
9 Commission shall prescribe regulations, and review
10 and revise such regulations as necessary in response
11 to subsequent changes in technology or behavior, de-
12 nying equipment authorization (under part 15 of
13 title 47, Code of Federal Regulations, or any other
14 part of that title) for any scanning receiver that is
15 capable of—

16 “(A) receiving transmissions in the fre-
17 quencies that are allocated to the domestic cel-
18 lular radio telecommunications service or the
19 personal communications service;

20 “(B) readily being altered to receive trans-
21 missions in such frequencies;

22 “(C) being equipped with decoders that—

23 “(i) convert digital domestic cellular
24 radio telecommunications service, personal
25 communications service, or protected spe-

1 cialized mobile radio service transmissions
2 to analog voice audio; or

3 “(ii) convert protected paging service
4 transmissions to alphanumeric text; or

5 “(D) being equipped with devices that oth-
6 erwise decode encrypted radio transmissions for
7 the purposes of unauthorized interception.

8 “(2) PRIVACY PROTECTIONS FOR SHARED FRE-
9 QUENCIES.—The Commission shall, with respect to
10 scanning receivers capable of receiving transmissions
11 in frequencies that are used by commercial mobile
12 services and that are shared by public safety users,
13 examine methods, and may prescribe such regula-
14 tions as may be necessary, to enhance the privacy of
15 users of such frequencies.

16 “(3) TAMPERING PREVENTION.—In prescribing
17 regulations pursuant to paragraph (1), the Commis-
18 sion shall consider defining ‘capable of readily being
19 altered’ to require scanning receivers to be manufac-
20 tured in a manner that effectively precludes alter-
21 ation of equipment features and functions as nec-
22 essary to prevent commerce in devices that may be
23 used unlawfully to intercept or divulge radio commu-
24 nication.

1 “(4) WARNING LABELS.—In prescribing regula-
2 tions under paragraph (1), the Commission shall
3 consider requiring labels on scanning receivers warn-
4 ing of the prohibitions in Federal law on inten-
5 tionally intercepting or divulging radio communica-
6 tions.

7 “(5) DEFINITIONS.—As used in this subsection,
8 the term ‘protected’ means secured by an electronic
9 method that is not published or disclosed except to
10 authorized users, as further defined by Commission
11 regulation.”.

12 (c) IMPLEMENTING REGULATIONS.—Within 90 days
13 after the date of enactment of this Act, the Federal Com-
14 munications Commission shall prescribe amendments to
15 its regulations for the purposes of implementing the
16 amendments made by this section.

17 **SEC. 6. UNAUTHORIZED INTERCEPTION OR PUBLICATION**
18 **OF COMMUNICATIONS.**

19 Section 705 of the Communications Act of 1934 (47
20 U.S.C. 605) is amended—

- 21 (1) in the heading of such section, by inserting
22 **“INTERCEPTION OR”** after **“UNAUTHORIZED”**;
23 (2) in the first sentence of subsection (a), by
24 striking “Except as authorized by chapter 119, title

1 18, United States Code, no person” and inserting
2 “No person”;

3 (3) in the second sentence of subsection (a)—

4 (A) by inserting “intentionally” before
5 “intercept”; and

6 (B) by striking “communication and di-
7 vulge” and inserting “communication, and no
8 person having intercepted such a communica-
9 tion shall intentionally divulge”;

10 (4) in the fourth sentence of subsection (a)—

11 (A) by inserting “(A)” after “intercepted,
12 shall”; and

13 (B) by striking “thereof) or” and inserting
14 “thereof); or (B)”;

15 (5) by striking the last sentence of subsection
16 (a) and inserting the following: “Nothing in this
17 subsection prohibits an interception or disclosure of
18 a communication as authorized by chapter 119 of
19 title 18, United States Code.”;

20 (6) in subsection (e)(1)—

21 (A) by striking “fined not more than
22 \$2,000 or”; and

23 (B) by inserting “or fined under title 18,
24 United States Code,” after “6 months,”;

1 (7) in subsection (e)(3), by striking “any viola-
2 tion” and inserting “any receipt, interception, divul-
3 gence, publication, or utilization of any communica-
4 tion in violation”;

5 (8) in subsection (e)(4), by striking “any other
6 activity prohibited by subsection (a)” and inserting
7 “any receipt, interception, divulgence, publication, or
8 utilization of any communication in violation of sub-
9 section (a)”;

10 (9) by adding at the end of subsection (e) the
11 following new paragraph:

12 “(7) Notwithstanding any other investigative or en-
13 forcement activities of any other Federal agency, the Com-
14 mission shall investigate alleged violations of this section
15 and may proceed to initiate action under section 503 of
16 this Act to impose forfeiture penalties with respect to such
17 violation upon conclusion of the Commission’s investiga-
18 tion.”.